

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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VICTOR HOWARD VAN SANT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 97-363 (RWR)
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION

Plaintiff brought this action for a refund of his 1986 federal income tax withholdings and for exemplary damages. Defendant has moved for summary judgment. Because plaintiff's refund claim is barred by the "look back" provisions of 26 U.S.C. § 6511(b) (2000), and plaintiff's exemplary damages claim is barred by the doctrine of res judicata, defendant's motion will be granted.

BACKGROUND

Plaintiff retired from the District of Columbia city government on July 18, 1981 due to a disability. (Def.'s Statement of Material Facts ("Def.'s Stmt.") at ¶ 1.) Upon retirement, plaintiff was entitled to a pension annuity of \$349 per month, from which he elected to have deducted health insurance, life insurance, and re-deposits into a Civil Service retirement account. (Id. at ¶¶ 2-3.) The Office of

Personnel Management ("OPM"), which manages plaintiff's pension, was unable to locate plaintiff until 1986, when it retroactively compensated him for the years 1981 through 1986. (Id. at ¶¶ 4-5.) OPM distributed \$23,206.00 in compensation as follows: (1) \$2,100.49 was paid directly to plaintiff; (2) \$18,368.31 was applied to deductions including health insurance, life insurance, and civil service redeposits; and (3) \$2,737.20 was withheld for federal taxes. (Id. at ¶¶ 6-8.) The \$2,737.20 federal tax withholding for 1986 is the subject of plaintiff's claim.

In 1988, the Internal Revenue Service (the "IRS") received a Statement from OPM that plaintiff had earned income of \$23,206.00 in 1986. (Compl. at 1; Def.'s Answer at ¶ 2.) After being contacted by the IRS, plaintiff went to OPM's Washington, D.C. offices on two occasions in an attempt to resolve what he believed was a mistake in the OPM Statement. See Van Sant v. Commissioner of Internal Revenue ("Van Sant I"), No. 14540-91, 1994 WL 4251, at 7 (T.C. Jan. 10, 1994) (as amended Jan. 13, 1994). He was told that OPM would get back to him in four to six weeks. That did not happen. See id.

Plaintiff next went to the IRS office at Bailey's Crossroads in Alexandria, Virginia. The Bailey's Crossroads office referred the inquiry to the IRS's Problem Resolution

Office (the "PRO") in Richmond, Virginia. In an undated letter, a caseworker from the PRO office informed plaintiff that he indeed had received \$23,206.00 in taxable income for 1986. The PRO's alleged reasoning was that OPM had told the PRO that plaintiff had received \$23,206.00 in 1986. See id.

Plaintiff claims that he filed an income tax return for 1986 in November, 1990 because the IRS threatened him with criminal prosecution if he did not. (Compl. at 1.) Defendant states that it is "without sufficient knowledge" to assess the accuracy of this claim. (Def.'s Answer at ¶ 3.) Plaintiff has not provided any documentation to confirm that he did in fact file his 1986 tax return in November, 1990.

On April 10, 1991, the IRS mailed to plaintiff a notice of deficiency for the tax year 1986 in the amount of \$5,969.00, which was in addition to the \$2,737.20 already withheld by the IRS for that year. (Def.'s Stmt. at ¶¶ 9-11.) The notice was based on the IRS's determination that all \$23,206.00 of plaintiff's OPM benefits, as well as \$8,826.00 in Social Security benefits received by plaintiff and his wife, were taxable income for 1986. (Id. at ¶ 10.)

Plaintiff filed a timely petition in United States Tax Court challenging the deficiency. (Id. at ¶ 12.) At one point after filing his petition, plaintiff was invited to meet

with an appeals officer of the IRS. See Van Sant I, 1994 WL 4251, at 7. The meeting consisted of the officer asking plaintiff if plaintiff had brought his checkbook. See id.

The Tax Court ordered plaintiff to file a joint income tax return for 1986, which plaintiff completed on October 22, 1993. (Def.'s Mot. Summ. J. Ex. D at 2.) On that return, plaintiff claimed he was entitled to a refund for 1986 in the amount of \$2,737.20 -- the amount of the 1986 withholding. (Id. at 3.)

On January 10, 1994, the Tax Court issued its decision. See Van Sant I, 1994 WL 4251, at 1. The court found that Social Security benefits the plaintiff and his wife received for the tax year 1986 were not taxable; that plaintiff had constructively received his monthly annuity payments beginning in July 1981; and that plaintiff's only taxable income for 1986 therefore was a grand total of \$4,114.00. See id. at 9-10. The court further found that there was no deficiency in plaintiff's federal income tax due for 1986, no additions to tax were due from him, and plaintiff was not required to file a federal income tax return for 1986. See id. at 10-11. The court concluded that "[t]his is a case that should not have been brought to trial." Id. at 11. Defendant claims that the

Tax Court "did not address the 1986 federal tax withholding of \$2,737.20." (Def.'s Stmt. at ¶ 16.)

On February 21, 1995, the IRS sent plaintiff a letter stating that his tax refund claim made on his October 22, 1993 return was disallowed because the statute of limitations had expired. (Def.'s Answer at ¶ 5.) Plaintiff responded on February 16, 1996, by bringing suit in this Court against the Commissioner of the IRS, the former Commissioner, and two former IRS employees, alleging they were negligent in their actions at the administrative level and in their litigation before the Tax Court with respect to plaintiff's notice of deficiency for 1986. (Def.'s Stmt. at ¶ 21.) On August 7, 1996, the Honorable Ricardo M. Urbina of this Court dismissed the action with prejudice for lack of subject matter jurisdiction. See Van Sant v. United States ("Van Sant II"), No. 96-00309, 1996 WL 627438, at \*2 (D.D.C. Aug. 7, 1996) (order granting defendant's motion to dismiss). That dismissal was affirmed by the Court of Appeals. See Van Sant v. United States, No. 96-5299, 1997 WL 404965 (D.C. Cir. July 2, 1997).

On February 24, 1997, plaintiff filed the instant action, seeking a refund in the amount of the \$2,737.20 withholding plus ten percent interest and exemplary damages of \$1 million

for "aggravations, mental anguish caused by the defendant." (Compl. at 1.) On May 1, 1997, defendant filed a motion for summary judgment, arguing that: (1) this Court lacks subject matter jurisdiction because the statute of limitations and "look back" provisions of 26 U.S.C. § 6511 bar plaintiff's claim for his 1986 withholdings; and (2) plaintiff's claims are precluded by res judicata because (a) the issue of a refund for 1986 should have been litigated in the Tax Court, and (b) the issue of exemplary damages was previously litigated and decided in this Court by Judge Urbina. Plaintiff contends that the provisions of the Internal Revenue Code cited by defendant are irrelevant because the IRS's wrongful withholding amounts to an unlawful taking under the Fifth Amendment.

#### DISCUSSION

Because plaintiff appears pro se, his complaint must be construed liberally. See Richardson v. United States, 193 F.3d 545, 548 (D.C. Cir. 1999) (citing Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). Further, I may read all of plaintiff's filings together in order to determine the basis for his claim where there would be no prejudice to the defendant in so doing. See id.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Accordingly, "a party is only entitled to summary judgment if the record, viewed in the light most favorable to the nonmoving party, reveals that there is no genuine issue as to any material fact." Aka v. Washington Hosp. Ctr., 156 F.3d 1284, 1288 (D.C. Cir. 1998) (en banc). As the movant, defendant carries the initial burden of identifying evidence that demonstrates the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The nonmoving party can then defeat the motion for summary judgment by pointing to evidence in the record that creates a genuine issue of material fact. See Harding v. Gray, 9 F.3d 150, 154 (D.C. Cir. 1993).

I. Refund Claim

Subject matter jurisdiction in this case rests upon 28 U.S.C. § 1346(a)(1), which waives the sovereign immunity of the United States from suits in a United States District Court for the recovery of erroneously collected taxes. However, section 1346(a)(1) must be read together with

26 U.S.C. § 7422(a) and 26 U.S.C. § 6511, which qualify a taxpayer's right to bring a refund suit. See United States v. Dalm, 494 U.S. 596, 601-02 (1990). Unless "a claim for refund has been filed within the time limits imposed by [section] 6511, a suit for refund, regardless of whether the tax is alleged to have been 'erroneously,' 'illegally,' or 'wrongfully collected,' . . . may not be maintained in any court." Id.

As the Supreme Court recently held, federal income tax withholdings are considered "payments" under the Internal Revenue Code. See Baral v. United States, 528 U.S. 431, 432 (2000). A federal income tax withholding is deemed to be "paid" on the 15th day of the fourth month following the close of the taxable year for which the refund is sought. See id.; see also 26 U.S.C. § 6513(b). Accordingly, plaintiff's withholdings for tax year 1986 are deemed to have been paid on April 15, 1987. This date becomes critical in considering the timeliness of plaintiff's claim under 26 U.S.C. § 6511 because that provision of the Internal Revenue Code imposes limitations on both the period in which a claim for a refund can be filed (statute of limitations) and the period for calculating the amount of the refund ("look back" provisions).

A. Statute of Limitations

Defendant first maintains that summary judgment is appropriate because plaintiff's demand for a refund of his 1986 tax withholding is time-barred. Section 6511(a) of the Internal Revenue Code limits the time in which a taxpayer may file a refund claim. It reads:

Claim for credit or refund of an overpayment of any tax . . . in respect of which the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

26 U.S.C. § 6511(a). Thus, for a taxpayer's refund claim to be timely, it must be filed either within three years of the day that the return was filed or within two years of the day that the tax was paid, whichever is later.

It is undisputed that plaintiff did not file a tax return in 1986. Exactly when he did file his 1986 return is a matter of dispute. Plaintiff asserts, without any supporting documentation, that he filed a return covering the 1986 tax year in November, 1990. It is certain, however, that plaintiff claimed a refund on the 1986 joint return he filed, at the direction of the Tax Court, on October 22, 1993.

Whether section 6511's two-year or three-year provision applies to plaintiff's claim has potentially significant consequences. If the two-year provision applies, the statute

of limitations runs from the date plaintiff's 1986 tax withholding is deemed to be paid, April 15, 1987, and hence expired on April 15, 1989. In that event, plaintiff's refund claim, whether first made in November, 1990 or October, 1993, would be time-barred.

If, however, the three-year provision applies, the statute of limitations runs from the date plaintiff's 1986 tax return was actually filed, either November, 1990 or October 22, 1993, and hence extended either to November, 1993 or October 22, 1996. Because the uncontested date of plaintiff's refund claim, October 22, 1993, meets both deadlines, plaintiff's refund claim is not time-barred if the three-year provision applies, regardless of whether he first filed his 1986 tax return in November, 1990 or on October 22, 1993.

Defendant argues that section 6511(a)'s three-year limitations period does not apply to a taxpayer who, like plaintiff, does not file a return or files a late return. This argument raises at least two unresolved legal questions. First, courts are divided on the question of whether section 6511(a) applies to tax returns filed in an untimely fashion. Some circuits interpret section 6511(a) strictly, holding that a refund claim based on a delinquent return is timely if the claim is filed within three years from the time

the delinquent return is filed. See Lundy v. Commissioner, 45 F.3d 856, 867 (4th Cir. 1995), rev'd on other grounds, 516 U.S. 235 (1996); Oropallo v. United States, 994 F.2d 25, 30-31 (1st Cir. 1993) (per curiam), cert. denied, 510 U.S. 1050 (1994). Other circuits have held that the three-year limitation period applies only if the taxpayer files a timely tax return. See Miller v. United States, 38 F.3d 473, 475 (9th Cir. 1994); Galuska v. Commissioner, 5 F.3d 195, 196 (7th Cir. 1993). The Court of Appeals for this Circuit has yet to address the issue.

Second, no court appears to have addressed the issue of whether section 6511(a) applies at all to a taxpayer who is not required to file a tax return for the tax year in question. In this case, the Tax Court found that plaintiff was not required to file a tax return for 1986. See Van Sant I, 1994 WL 4251, at 10. It is unclear, therefore, if plaintiff's claim falls under section 6511(a), which places time limits on refund claims "in respect of which the taxpayer is required to file a return. . . ." 26 U.S.C. § 6511(a). This language may or may not modify the subsequent clause "or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. . . ." If it does not, then a non-filing taxpayer must file refund claim within two years of

payment for any tax year, regardless of whether he or she was required to file a return. If it does, then a non-filing taxpayer must file a refund claim within two years of payment only if he or she was required to file a return for the tax year in question. If the non-filing taxpayer was not required to file a return, as was true here, then arguably the claim falls outside of section 6511(a) and is not subject to any filing limits. While this interpretation would appear to contradict section 6511(a)'s general purpose of limiting the time in which taxpayers can seek tax refunds, it is not an implausible reading of the statute's plain language.

I need not resolve either of these questions, because even if plaintiff's claim is timely under section 6511(a), it is barred under the "look back" provisions of section 6511(b).

B. "Look Back" Provisions

Section 6511(b)(2) contains two "look back" provisions which limit the amount a taxpayer can claim in a refund action. These provisions read in pertinent part:

(A) If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. . . .

(B) If the claim was not filed within such 3-year period, the amount of the credit or refund shall not

exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

26 U.S.C. § 6511(b)(2)(A),(B). Thus, the first "look back" provision, found in section 6511(b)(2)(A), limits claims made under the three-year limitations period described in section 6511(a) to tax overpayments made within the three years immediately preceding the filing of the claim plus any extension of time given for filing of the return.<sup>1</sup> The second "look back" provision, found in section 6511(b)(2)(B), is

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<sup>1</sup>Construing plaintiff's pleading liberally, plaintiff might be arguing that he did receive a de facto extension of time to file his 1986 tax return. Plaintiff was not legally obligated to file any income tax return for 1986. See Van Sant I, 1994 WL 4251, at 10. Plaintiff claims that he filed a 1986 tax return in November, 1990 only after the IRS threatened him with criminal prosecution if he did not. It is also uncontested that he filed a 1986 joint tax return on October 22, 1993 by order of the Tax Court. In either event, the IRS's insistence that plaintiff file a 1986 return might be construed as a de facto extension of time.

In general, "[c]ourts will strain to interpret the language of Section 6511 allowing for refund of excess taxes paid in a way that will avoid hardship upon the taxpayer, subject only to the limitation that the plain language of the section will not be ignored." Glaze v. United States, 641 F.2d 339, 343 (5th Cir. 1981). I construe section 6511(b)(2)'s plain language reference to "any extension" as referring only to extensions otherwise defined in the Internal Revenue Code. There is no evidence in the record that plaintiff was granted an extension under a provision of the Code, specifically 26 U.S.C. § 6081(a), which allows the IRS to grant most individual taxpayers extensions of up to six months. Here, plaintiff did not file his 1986 return until at least approximately three-and-a-half years and at most six-and-a-half years after it ostensibly would have been due.

activated when the three-year provision in 6511(a) does not apply, and limits the refund to taxes paid during the two years immediately preceding the filing of the claim.

Defendant argues that even if plaintiff's claim is not time-barred because the three-year limitations period applies, plaintiff can seek a refund only of overpayments made since October, 1990 (if plaintiff first filed in October, 1993) or since November, 1987 (if plaintiff first filed in November, 1990). In either case, defendant argues, plaintiff cannot seek a refund of his 1986 withholding, which was presumed to have been paid on April 15, 1987. Unfortunately, I agree.

Section 6511(b) limits the amount of recovery to overpayments made within the previous two or three years. See Lee v. United States, No. 94-1467, 1995 WL 527373 at \*4 (6th Cir. 1995) (holding that section 6511(b)(2)(A) limits refunds brought under the three-year period of section 6511(a) to overpayments made within the previous three years) (citations omitted); Snyder v. United States, 616 F.2d 1187, 1188 (10th Cir. 1980) (holding that section 6511(b)(2)(B) limits refunds brought under the two-year period of section 6511(a) to overpayments made within the previous two years). Plaintiff's withholding for 1986 is indeed an overpayment, presumed to have been paid on April 15, 1987. As such, the 1986

withholding falls outside of both the three-year and two-year "look back" provisions of section 6511(b)(2), regardless of whether plaintiff first filed his refund claim in November, 1990 or in October, 1993.<sup>2</sup>

This court cannot toll, for nonstatutory equitable reasons, the statutory time and "look back" limitations for filing tax refund claims set forth in section 6511. See United States v. Brockamp, 519 U.S. 347, 348 (1997). For better or worse, "[t]ax law, after all, is not normally characterized by case-specific exceptions reflecting

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<sup>2</sup> If plaintiff first filed his 1986 tax return in November, 1990, he may recover only overpayments for that year made after November, 1987. If plaintiff first filed his 1986 return in October, 1993, he may recover only overpayments for that year made after October, 1990. Therefore, his 1986 withholding, deemed to be paid on April 15, 1987 falls outside of both periods.

individualized equities." Id. at 352.<sup>3</sup> Accordingly, plaintiff's refund claim will be dismissed.<sup>4</sup>

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<sup>3</sup> Inequities might exist that would justify tolling the "look back" provisions of section 6511 if tolling were allowed. The Tax Court made a clear finding that plaintiff's tax liability for 1986 was \$4,114.00. See Van Sant I, 1994 WL 4251, at 10. The Court further chastened the IRS that their case against plaintiff, a disabled retiree, should never have been brought. See id. at 11. For the IRS to keep \$2,737.20 of plaintiff's \$4,114.00 may seem patently unfair. However, plaintiff was not prevented from filing a tax return or other refund claim before November 1990. He contested the basis of his 1986 assessment in 1988 (Compl. at 1.), indicating he had knowledge of the amount he was owed. He had an opportunity to file a refund claim at that time. Timely action on plaintiff's part at that time may have given this Court the ability to grant him some of the relief he now seeks.

<sup>4</sup> Defendant claims that res judicata is an additional ground that bars this Court from considering plaintiff's refund claim because plaintiff could have raised the issue of a refund of 1986 withholdings in the Tax Court, but did not.

The decisions of the Tax Court are res judicata as to a taxpayer's deficiency or overpayment. See Empire Ordinance Corp. v. Harrington, 249 F.2d 680, 682 (D.C. Cir. 1957). Tax liability for each taxable year constitutes a "single, unified cause of action, regardless of the variety of contested issues and points that may bear on the final computation." Statland v. United States, 178 F.3d 465, 741-42 (7th Cir. 1999), cert. denied, 528 U.S. 1155 (2000). However, decisions of the Tax Court leave open the question of whether the taxpayer is entitled to a refund of any overpayment. See Empire, 249 F.2d at 682.

Defendant's claim rests on the proposition that the Tax Court determined only that plaintiff had no deficiencies for 1986, but did not address whether plaintiff was liable for the amount of his 1986 withholding. However, there is a legitimate argument that the Tax Court did, at least implicitly, address the propriety of the withholding. The Tax Court clearly stated that plaintiff's total taxable income for 1986 was \$4,114 and that plaintiff was not obliged to file a tax return for that year. See Van Sant I, 1994 WL 4251, at

(continued...)

C. Takings Clause

Plaintiff contends that the provisions of the Internal Revenue Code barring his claim are irrelevant because the IRS's actions constitute an arbitrary taking of property in violation of Takings Clause of the Fifth Amendment.<sup>5</sup> Article I, section 8, clause 1 of the Constitution grants Congress the "Power to lay and collect Taxes" and the Sixteenth Amendment vests Congress with the power to lay and collect taxes on incomes. The federal income tax, therefore, is specifically authorized by the Constitution and does not violate the Takings Clause. See Coleman v. Commisioner, 791 F.2d 68, 70

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(...continued)

10. Taken together, these statements may indicate a finding that plaintiff had zero tax liability for 1986 and hence his \$2,706 withholding was an overpayment.

Since the Tax Court's decisions are not binding as to whether the taxpayer is entitled to a refund of any overpayment, see Empire, 249 F.2d at 682, and the Tax Court determined that plaintiff overpaid his 1986 taxes in the amount of \$2,706, res judicata may not bar this Court from determining his eligibility for a refund. If anything, that doctrine may work in reverse to bar defendant from now arguing that plaintiff is liable for the amount of his 1986 withholding.

Nevertheless, because of my disposition of the "look back" issue, I need not reach this argument.

<sup>5</sup>Plaintiff's complaint arguably could also be construed as making a due process claim. Such a claim would lack merit. See Oropallo, 994 F.2d at 31. Post-collection judicial review accords a taxpayer all the process that is due under our tax laws. See id. at 31 (citing Martinez v. IRS, 744 F.2d 71, 72 (10th Cir. 1984)).

(7th Cir. 1986) (explaining that, while taxes indeed "take" income, that is "not the sense in which the Constitution uses takings" in light of Article I, section 8, clause 1 and the Sixteenth Amendment). Further, Congress' power to levy an income tax also vests that body with the power to set forth the means and methods for making refunds. See Jacobs v. Gromatsky, 494 F.2d 513, 514 (5th Cir. 1974). Accordingly, Congress' constitutional power to institute and operate an income tax disposes of plaintiff's takings claim even if it is true that the 1986 tax withholding was wrongful.

## II. Exemplary Damages Claim

Defendant argues that plaintiff's claim for exemplary damages of \$1 million is barred by res judicata. The doctrine of res judicata precludes a plaintiff from bringing against the same party a second action asserting new claims that arise out of the same events that gave rise to the first action. See Nevada v. United States, 463 U.S. 110, 129-130 (1983) ("when a final judgment has been entered on the merits of a case, '[i]t is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every other matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for

that purpose'") (quoting Cromwell v. County of Sac., 94 U.S. 351, 352 (1876)); Brown v. Felsen, 442 U.S. 127, 131 (1979) ("[r]es judicata prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding") (citations ommitted); Restatement (Second) of Judgments § 24 (1982).

Judge Urbina has already held that this Court lacks subject matter jurisdiction over plaintiff's claims for exemplary damages under the Federal Tort Claims Act and dismissed that claim. See Van Sant II, 1996 WL 627438, at \*2. Res judicata bars this Court from revisiting that decision. Accordingly, plaintiff's claim for exemplary damages will be dismissed.

#### CONCLUSION

Plaintiff brought this action because he felt that he was the victim of an injustice. The IRS kept the \$2,737.20 it withheld from plaintiff in 1986, despite a clear finding by the United States Tax Court that plaintiff's total taxable income for that year was a mere \$4,114.00. Plaintiff, quite understandably, wants his money back. While I sympathize with the plaintiff's plight, I am unable to grant him the relief he seeks. Plaintiff's refund claim is barred by the "look back"

provisions of 26 U.S.C. § 6511(b)(2) and those provisions cannot be tolled for equitable reasons. Further, Congress' constitutional power under Article I, section 8, clause 1 to levy taxes in conjunction with its authority under the Sixteenth Amendment to assess and levy an income tax defeats plaintiff's claim that the IRS's action is a violation of the Takings Clause of the Fifth Amendment. Plaintiff's claim for exemplary damages is barred by the doctrine of res judicata. Defendant's motion for summary judgment will therefore be granted. An Order consistent with this Opinion is being issued.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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RICHARD W. ROBERTS  
United States District Judge